

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS
COMMERCE COMMISSION

2006 DEC 19 A 11:01

CHIEF CLERK'S OFFICE

LEAR OPERATIONS CORPORATION

vs.

THE PEOPLES GAS LIGHT AND COKE
COMPANY

05-0682

Complaint as to billing/charges in
Chicago, Illinois

COMPLAINANT'S INITIAL BRIEF

LEAR OPERATIONS CORPORATION, by Howard & Howard Attorneys, P.C., respectfully submits its Initial Brief in this matter.

On October 20, 2005, Complainant, Lear Operations Corporation ("Lear"), filed its verified Formal Complaint with the Illinois Commerce Commission ("Commission") under Section 10-108 of the Public Utilities Act (220 ILCS 5/10-108), and Section 280.170 of the Commission's Rules of Practice (83 Ill. Adm. Code Sec. 280.170), against Peoples Gas Light and Coke Company ("Peoples"). Complainant alleged in its Complaint that Peoples committed certain billing errors pertaining to Complainant's natural gas usage and service at its automotive parts assembly facility at 12519 South Burley Avenue, Chicago, IL 60633 during the time period from December 2003 through February 2004. Following several continuances, the parties appeared and presented testimony and other evidence at a hearing on October 30, 2006, following which the matter was marked Heard and Taken.

Mr. David C. Williams testified for Complainant at the October 30 hearing. Mr. Williams is the Plant Manager at the facility in question, responsible for quality, shipping, maintenance, engineering, finance, and information technology. He has been in his position since August 2003.

(Williams, Tr. 24). The building housing Lear's operation was new when Mr. Williams was transferred to it from another Lear facility in 2003. Lear brought in equipment in December 2003 - January 2004, for a planned operation start in July 2004. During that time, the building was just a shell, with a total of 55,000 square feet. (Williams, Tr. 26). Once production started in July 2004, Lear began operating two shifts per day, together extending from 6:00AM to Midnight, a total of 18 hours. (Williams, Tr. 32). As explained by Mr. Williams, Exhibit 1 showed that for the billing period represented by the bill dated December 9, 2003, Peoples billed Lear \$8,877.62, for usage of 11,127.83 therms, when the average temperature was 39 degrees. (Lear Ex. 1; Peoples Ex. 12, p. 1 of 3). The next bill, dated February 11, 2004, was for a two-month billing period, and was \$35,213.74, for usage of 44,097.31 therms, when the average temperatures were 29 degrees and 24 degrees, respectively. (Lear Ex. 1; Peoples Ex. 12, p. 2 of 3).

The facility has two overhead natural gas heating units and one small gas water heater that supplies hot water to the restrooms. Those are the only items of equipment using natural gas at the facility. During the time period in question, and until at least March 2004, the Lear facility ran only one 12-hour shift per day. During the heating season, Mr. Williams activated the overhead heating units at the start of the shift by throwing a switch and turned them off at the end of the shift. (Williams, Tr. 28, 30, 32-33). Mr. Williams testified that he prepared Complainant's Ex. 1, a graph and spreadsheet showing Lear's gas usage, amount billed, and the average ambient temperature for the months December 2003 through June 2006, based on actual utility bills from Peoples. (Lear Ex. 1).

Mr. Williams continued his testimony concerning Exhibit 1, stating that in the next December billing period, when production had begun and two shifts were operating rather than one, with a similar average temperature, Lear's usage and bill were significantly lower. Specifically, for

the bill dated December 9, 2004, when the average temperature was 41 degrees, Lear was billed for 3,142.79 therms, or \$3,344.10. In January and February of 2005, corresponding to the 2-month billing period in February 2004 and described hereinabove, the combined billed usage was 9,671.28 therms, or \$10,081.78, when the average temperature was 26.5 degrees. (Lear Ex. 1). Continuing the pattern of usage and billing amounts, the billing period represented on the bill dated December 27, 2005, showed a usage of 4,569.24 therms, with a bill of \$6,716.26, at an average temperature of 33 degrees. The two months ending on the bill dated February 10, 2006, reflected usage of 11,899.34, a billing amount of \$16,529.97, and average temperature of 31.5 degrees.

When asked if he could explain the vast discrepancy in usage and billings for the December 2003-February 2004 period compared to the corresponding periods in the two subsequent years, Mr. Williams said he was "at a loss." (Williams, Tr. 38). The two subsequent periods reflected a facility with two shifts at full production, and with the gas heaters operating more and the temperature set higher than in the initial start-up period in question. (Williams, Tr. 40-41). The decline in billed usage from the December 2003 – February 2004 period to the corresponding months in 2004-2005 was drastic, with no plausible explanation. Peoples' witness Mr. Schmoldt agreed that the bills for the period in dispute – December 2003-February 2004 – are "out of line" with subsequent bills for corresponding periods. (Schmoldt, Tr. 157). As Mr. Williams testified, the HVAC equipment, including the heaters at the facility in question, were regularly serviced, and upon inspection by a mechanical service company, were found to operating properly. (Williams, Tr. 46).

Mr. Williams introduced recalculated bills for the periods in question, i.e., the month ending December 9, 2003 (Lear Ex. 2), and the two-month period ending February 11, 2004 (Lear Ex. 3; Lear Ex. 4). Mr. Williams, who as Plant Manager has responsibility for engineering and all

mechanical processes and equipment for the Lear facility, demonstrated what the usage and bills should have been based on the subsequent billing periods to which he testified. For the bill dated December 9, 2003, Mr. Williams demonstrated that 4,000 therms would have been the correct usage if metered and billed correctly. Based on the same billing determinants, rates and other charges from the bill actually rendered, the corrected billing amount is \$3,287.79. (Williams Tr. 44; Lear Ex. 2). This amount is \$5,589.83 less than the amount in the bill rendered by Peoples. Similarly, for the two-month billing period reflected in the bill dated February 11, 2004, if Lear's usage had been correctly metered the therm usage would have been 14,000, and the bill would have been \$11,666.33. This amount is \$23, 547.41 less than the amount in the bill rendered by Peoples. Added together, the combined overcharges are \$29,137.24 (\$5,589.83 + \$23, 547.41). This is the amount Complainant believes it was overcharged based on the state of its development and operation at the facility and the nature of its equipment that utilize natural gas. Such recalculated amounts necessarily involve estimation, as we don't know precisely how much gas Lear used during the periods in question. As an alternative, if the Commission does not agree with Complainant's recalculated usage for the period represented in the February 11, 2004, bill, Mr. Williams sponsored another exhibit, Lear Ex. 4, that reflects a therm usage of 20,000 rather than the 14,000 from Exhibit 3. Based on a 20,000 therm usage for the February 11, 2004, bill, the billed amount would have been \$16,335.12, translating into an overcharge of \$18,878.62 (\$35,213.74 - \$16,335.12). This overcharge amount, when added to the overcharge of \$5,589.83 from the December 9, 2003, bill, results in a total overcharge of \$24,468.45 (\$18,878.62 + \$5,589.83).

WHEREFORE, Complainant prays that the Commission order Respondent, Peoples Gas Light and Coke, to refund to Complainant \$29,137.24, plus interest pursuant to Section 280.75 of

the Commission's Rules of Practice. Alternatively, Complainant prays that the Commission order Respondent to refund \$24,468.45 plus interest.

Dated: December 15, 2006

Respectfully submitted,

LEAR OPERATIONS CORPORATION

By: _____


William M. Shay, Its Attorney


William M. Shay
Howard & Howard Attorneys, P.C.
Attorney for Complainant
211 Fulton, Suite 600
Peoria, Illinois 61602
Telephone: (309) 672-1483
Facsimile: (309) 672-1568
email: wms@h2law.com

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2006, I served the foregoing **COMPLAINANT'S INITIAL BRIEF**, by causing a copy to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties indicated below:

Mark L. Goldstein, Esq.
Mark L. Goldstein, P.C.
108 Wilmot Road, Suite 330
Deerfield, Illinois 60015

Ms. Eve Moran, Administrative Law Judge
Illinois Commerce Commission
160 North LaSalle Street
Chicago, IL 60601



William M. Shay